

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN BROADCASTING COMPANIES,
INC., DISNEY ENTERPRISES, INC., CBS
BROADCASTING INC., CBS STUDIOS INC.,
NBCUNIVERSAL MEDIA, LLC, NBC STUDIOS, :
LLC, UNIVERSAL NETWORK TELEVISION, LLC,
TELEMUNDO NETWORK GROUP LLC, and :
WNJU-TV BROADCASTING LLC, : Civil Action No. 12-CV-1540 (AJN)

Plaintiffs/Counterclaim Defendants,

v.

AEREO, INC.,

Defendant/Counterclaim Plaintiff.

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WNET, THIRTEEN, FOX TELEVISION
STATIONS, INC., TWENTIETH CENTURY
FOX FILM CORPORATION, WPIX, INC.,
UNIVISION TELEVISION GROUP, INC., THE : Civil Action No. 12-CV-1543 (AJN)
UNIVISION NETWORK LIMITED
PARTNERSHIP, and PUBLIC BROADCASTING
SERVICE,

Plaintiffs/Counterclaim Defendants,

v.

AEREO, INC.,

Defendant/Counterclaim Plaintiff.

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DEFENDANT AEREO, INC.'S NOTICE OF SUPPLEMENTAL AUTHORITY

In further support of its Motion for Summary Judgment (Dkt. 195) and its Opposition to Fox Plaintiffs' Motion for Partial Summary Judgment (Dkt. 221), Defendant Aereo, Inc. ("Aereo") respectfully submits the recent decision in *Fox Broadcasting Company, Inc. v. Dish Network LLC*, No. 12-57048 (9th Cir. July 24, 2013) (attached hereto as Exhibit A). The *Dish Network* decision was rendered after the briefing in this case on the summary judgment motions was completed, and is relevant to these motions because:

- (1) It considers the question of the volition required for a finding of direct infringement and finds that the consumer, and not Dish, "is 'the most significant and important cause' of the copy" in factual circumstances where Dish's involvement in the copies being made exceeds the involvement in *Cartoon Network LP, LLLP v. CSC Holdings, Inc.*, 536 F.3d 121 (2d Cir. 2008) ("*Cablevision*"), as well as any involvement of Aereo in this case. *Dish Network*, slip op. at 12.
- (2) It reiterates that, under *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984), all four fair use factors favor a finding that a consumer's recording of programming broadcast over-the-air constitutes a fair use under 17 U.S.C. § 107. *Dish Network*, slip op. at 15-16.

For these reasons, Aereo asks this Court to consider this authority in connection with these motions.

Dated: July 25, 2013

Respectfully submitted,

/s/ R. David Hosp
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Attorneys for Defendant Aereo, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2013, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Kathryn Lugo
Kathryn Lugo